

Statement
Insurance Association of Connecticut

Judiciary Committee

March 20, 2009

SB 1030, An Act Concerning The Apportionment Of Liability After A Claim Is Withdrawn

The Insurance Association of Connecticut urges your support of SB 1030, An Act Concerning The Apportionment Of Liability After A Claim Is Withdrawn.

SB 1030 seeks to eliminate the legislative gap created by the adoption of the apportionment statutes, which did away with joint and several liability. This bill seeks to remove the double standard occurring under our apportionment laws. Currently any party that has settled or been released from an action, can still be considered for apportionment purposes. The same does not hold true when the action has been withdrawn against a party. A party who is removed via a withdrawal cannot be the subject of an apportionment complaint.

Section 52-102b language contemplates apportionment against settled and released parties but does not include withdrawn parties. Up until last year there was a split of authority whether parties who had been released via a withdrawal were considered both similarly released and therefore subject to apportionment. The Connecticut Supreme Court entered a decision, in the matter of Vierra v. Cohen, 293 Conn. 412, that put an end to that debate finding that a legislative gap was created upon the adoption of the apportionment statutes. The court concluded that withdrawn parties are not subject to the provisions of the statute and therefore cannot be subject to an apportionment complaint. The court concluded that although a withdrawn party was

specifically not included in the apportionment statute, the outcome is directly contrary to the purpose of adopting the statute in the first place, elimination of joint and several liability. The court clearly found fault with the outcome of their ruling and invited that the legislature "find a place in its busy agenda to inquire into the consequences and the desirability" of their decision. Id. at 443.

By permitting the ruling to stand, one party who may only be partially responsible for a loss, could be required to pay the entire settlement if other responsible parties were removed from the action via a withdrawal. Why should a party, who out of the mercy of the plaintiff, escape culpability of liability simply because the action was withdrawn against them?

SB 1030 seeks to codify the intent of the apportionment statutes, by making sure that all culpable parties' fault is considered and no one party bears the sole responsibility of a loss. Such an unjust outcome is why this very legislature did away with joint and several liability back in the late 80's. Permitting plaintiffs to release withdrawn parties from culpability is permitting plaintiffs to permit joint and several liability.

The intent in adopting the apportionment statutes was to strike an equitable balance between the interests of plaintiffs and defendants. Under the court's decision, the balance this legislature sought to achieve has been shifted dramatically in favor of the plaintiff, who now has the ability to erect an absolute bar to apportionment. We do not believe this is what the legislature sought to accomplish and the IAC urges your support of SB 1030 to amend Section 52-572h(n).